No. 56.

Term No. 56

Supreme Court
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Filed Oct. 12, 1900.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1899.

ROGERS PARK WATER COMPANY,
Plaintiff in Error,

vs.

JOHN S. FERGUS,
Defendant in Error.

} ERROR TO SUPREME COURT OF ILLINOIS.

Supplemental Brief for Defendant in Error.

JESSE B. BARTON,
ATTORNEY FOR DEFENDANT IN ERROR.

CHICAGO:
FERGUS PRINTING COMPANY.
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MAY IT PLEASE THE COURT:

The Supreme Court of Illinois in its opinion in this case stated: "A rate or price reasonable or just when "fixed may, in the future, become so unreasonably high "that the exaction of such rate or price is but an extor- "tion. The duty of the corporation does not, however, "change but remains the same—that is, to exact only "reasonable compensation. The power of the State to "enforce that duty is not exhausted by its exercise in the "first or any subsequent instance, but is continuous, and "may be exerted from time to time, whenever necessary "to prevent extortion by the agency created by the State "to serve the public."

It is the exercise of the police power to prevent extortion which was exercised in this case and which it is claimed impaired the obligation of a contract.

Under the common law extortion committed by public

officers was a crime, and by statutes it has been extended to cover the offense of demanding unwarranted charges by quasi-public corporations involving the safety and the welfare of the people.

In N. O. Gas Co., vs. La. Light Co., 115 U. S., 650, 672, this Court said: "whatever, therefore, in the manufact-"ure of gas in the City of New Orleans, proves to be "injurious to the public health, the public comfort or the "public safety, may, notwithstanding the exclusive grant "to plaintiff, be prohibited by legislation, or by munici-"pal ordinance passed under legislative authority. It "can not be said with propriety, that to sustain that "grant is to obstruct the state in the exercise of the "power to provide for the public protection, health, and "safety."

In the case at bar, no attack is made on the grant to construct and maintain water works for a specified period. It is only claimed by defendant in error that the legislature having considered the changed conditions, or having considered that the conditions have changed, retained and exercised the power to protect the public against present extortion.

In R. R. Co. vs. Omaha, 170 U. S., 57, 72, the Court lays down the rule, applicable to this class of cases, as follows: "Usually, where a contract not contrary to pub-"lic policy has been entered into between parties compe-"tent to contract, it is not within the power of either "party to withdraw from its terms without the consent "of the other; and the obligation of such a contract

"is constitutionally protected from hostile legislation. "Where, however, the respective parties are not private "persons, dealing with matters and things in which the "public has no concern, but are persons and corporations "whose rights and powers were created for public pur- "poses, by legislative acts, and where the subject matter "of the contract is one which affects the safety and well- "fare of the public, other principles apply. Contracts of "the latter description are held to be within the super- "vising power and control of the legislature when exer- "cised to protect the public safety, health, and morals, "and that clause of the Federal Constitution which pro- "tects contracts from legislative action can not in every "case be successfully invoked. The presumption is that "when such contracts are entered into it is with the "knowledge that parties can not, by making agreements "on subjects involving the rights of the parties, with- "draw such subjects from the police power of the legis- "lature."

In this case the rights and powers created and vested in Keeler, assignor to plaintiff in error, were created for public purposes by a legislative act. The subject matter of the contract is one which affects the welfare of the public. This contract is, therefore, within the supervising power of the legislature, and is not protected by the clauses of the Federal Constitution invoked by plaintiff in error.

The principle was applied in N.-W. Fertilizing Co. vs. Hyde Park, 97 U. S., 659, to protect the public against offensive sights and smells, and possibly unhealthy ones.

So in the Chicago Lake Front cases it was held that a contract which took from the public the control of the harbor and hampered it in its rights of fishery and navigation were revocable.

So in Beer Co. vs. Massachusetts, 97 U. S., 25, to protect the public against the evil effects of inebriety, charter rights could be invaded; while in Stone vs. Miss., 101 U. S., 814, a charter right to carry on a lottery scheme was held to be a mere license and revocable at will whenever the legislature should determine that morals, health, or safety of the public were menaced.

In none of the cases above cited is there such cogent reason for applying the rule laid down in the Gas case as in the case at bar.

In the Hyde Park case, it was an admitted fact that those who might be affected by the operation of the business of the fertilizing company had voluntarily entered the neighborhood after that business was opened.

In the Beer case, a sumptuary law was sustained, an exercise of the police power long in doubt and still strongly opposed as inconsistent with a republican government.

In the Lottery case, a law of a class very nearly allied to the sumptuary laws was sustained; while in the Lake Front cases that was condemned as an incident which has been sustained as a direction, namely, the grant in fee of submerged lands covered by the shallow waters of navigable lakes and the seas.

In the case at bar, however, the legislation which is claimed to be unconstitutional was to protect the people of Rogers Park against extortionate charges for an absolute necessity of life, that without which man can not live.

Respectfully submitted,

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